

REMARKS/ARGUMENTS

The Examiner's attention to and examination of the present application is noted with appreciation.

The claims have been substantially narrowed in order to put them in condition for allowance.

In paragraph 1 of the Office Action dated October 21, 2003, the Examiner stated that the drawing was not received. That drawing has been added as an attachment sheet to this response.

In paragraphs 2 and 3 of the Office Action, the Examiner rejected claims 75 to 102 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement.

In paragraph 3a of the Office Action, the Examiner rejected claim 75 under 35 U.S.C. § 112, first paragraph, because the term "figurine" was not defined in the specification as it pertains to the handle/body portion combination disclosed. Although the term "individual figurine" did not appear in the specification, the Figures clearly show an individual figurine. The Examiner stated that for examination purposes, an individual figurine is taken to mean the combination of body and handle that comprises an entire human, alien, humanoid, mammal, insect or creature form. We accept the Examiner's definition and claim 75 has been amended to clarify that the figurine means "an entire body of an individual figurine;" and that the figurine comprises an "alien, human, humanoid, mammal, insect, or creature."

In paragraph 3b of the Office Action, the Examiner rejected claim 76 under 35 U.S.C. § 112, first paragraph, because the term stand-alone figurine was not defined in the specification. Claim 76, referencing a "stand-alone figurine" has been canceled. New claim 103 has been added to recite a container with a flat bottom as shown in the Figures.

In paragraph 3c of the Office Action, the Examiner rejected claim 95 under 35 U.S.C. § 112, first paragraph, because the term "creature" was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The term "creature" has been added to claim 75, so the comments below are applicable to both claim 75 and 95. The Examiner stated that for examination purposes the term "creature" was defined as something created either animate or inanimate, a lower animal, including a farm animal, and a human

being. We accept the Examiner's definition with the exception that the use of the term "creature" is as an inanimate representation of an animate form or sentient being, and not a creation.

Regarding claims 76, 83 through 85, and 100, these claims have been canceled.

Regarding claims 77 through 82, 86 through 94, 96 through 99, 101 and 102, these claims are dependent on claim 75 which is believed to be allowable. Accordingly, these claims are also believed to be allowable.

In paragraphs 4 and 5 of the Office Action, the Examiner rejected claims 75, 76 and 100 under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. The Examiner stated that in claim 75, applicant has not disclosed a figurine, but has disclosed a human, alien, humanoid, mammal, insect, and creature forms. The definition of "figurine" in the American Heritage Dictionary is "a small molded or sculpted figure; statuette." That is exactly what the Figures show. Nevertheless, claim 75 is further limited by the limitations of an "entire body" and that the figurine (i.e. sculpted figure) is of a human, alien, humanoid, mammal, insect, or creature. In summary, claim 75 has been amended to disclose a figurine in which the handle and lower portions, in combination with a middle cap portion, form an entire body of a figurine. The entire figurine may be in the form of a human, alien, humanoid, mammal, insect, or creature.

Regarding claims 76 and 100, these claims have been canceled.

In paragraph 6 of the Office Action, the Examiner stated that in claim 76, applicant has not described the combination of a handle and body portion comprising a stand-alone figurine. As stated above, claim 76 has been canceled.

In paragraph 7 of the Office Action, the Examiner stated that in claim 100 the specification states "body" is intended to include a lower portion complimentary to the handle/head, and examples include the arms/torso/legs that correlate to the head as shown in the Figures. Claim 100 has been canceled.

In paragraphs 8 through 10 of the Office Action, the Examiner rejected claims 75 through 102 under 35 U.S.C. § 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 75, the Examiner stated that the

term "individual figurine" may include shapes outside those disclosed. As stated above, claim 75 has been amended to clarify the term individual figurine as combination of handle, lower and middle cap portion that comprise an entire body wherein the figurine is human, alien, humanoid, mammal, insect, or creature form.

In paragraph 11 of the Office Action, the Examiner rejected claim 76 under 35 U.S.C. § 112, second paragraph, because the terms "stand-alone figurine" and "support for placement" are indefinite. As stated above, claim 76 has been canceled.

In paragraphs 12 through 15 of the Office Action, the Examiner rejected claims 75, 76, 78, 79, 83-88, 93-95, 97 and 99 under 35 U.S.C. § 102(b) as being anticipated by Conconi (WO 9918011). Regarding claim 75, the Examiner stated that Conconi teaches a container with a flowable confectionery (Fig. 1), a non-edible handle disposed directly above the container, a body disposed below the handle removably positioned within the container and that the handle and body in combination comprise an individual figurine. The Examiner further states that since the recitation of "said handle portion and said body portion comprising, in combination, an individual figurine" does not restrict the handle portion or body portion to form any particular shape, Conconi also teaches a figurine.

Conconi discloses a support shaped like a dome or a tray with a handle for supporting ice creams, and the like packaged with paper-like wrappers to allow reliable support for the ice cream and collection of any melted product. Fig. 1 shows a non-edible, complete figure (a duck) attached to a cap apart from a paper-like conventional frustum shaped wrapper. The lower part of the invention is placed in the melted conventional paper wrapper which contains the confectionery and is then frozen or re-frozen. The lower portion is an inedible "stick". In other words, the entire figure is the inedible handle portion without the cap or the lower stick. If the handle were removed, a figure or figurine would no longer be present.

Applicant's amended claim 75 recites a handle portion "comprising an upper body portion of said entire body", (e.g. a head) a lower portion "comprising a lower body portion of said entire body" (e.g. legs, torso, arms, etc.), and a middle portion that is the cap. The handle portion, lower portion and middle portion, in combination, form an entire figurine in the form of an alien, human, humanoid, mammal, insect,

or creature. Distinguished from Conconi, if the handle portion is removed, the result would be only the middle cap portion and the lower body portion, in other words, half of an "entire body". Additionally, the amended claims have been narrowed from "flowable" to "powder" confectionery. Conconi does not teach a powder confectionery. Therefore, Conconi's device is completely different from applicant's invention. Accordingly, it is believed that claim 75 is allowable over Conconi.

In paragraph 16 of the Office Action, the Examiner rejected claim 76 under 35 U.S.C. § 102(b) as being anticipated by Conconi (WO 9918011). The Examiner stated that the handle and body portion, in combination, comprising a stand alone figurine do not require additional support since the body portion comprises a means for support of placement (Fig. 3-6). Claim 76 has been canceled.

Regarding claims 78, 79, 86-88, 93-95, 97 and 99 (also referenced in paragraphs 17 through 20 of this Office Action), these claims are dependent on claim 75 which is believed to be allowable over Conconi. Accordingly, these claims are also believed to be allowable over Conconi.

In paragraphs 21 and 22 of the Office Action, the Examiner rejected claims 75, 77-84, 92, 93 and 97-102 under 35 U.S.C. § 102(b) as being anticipated by Baker (WO 0019803). The Examiner stated, regarding claim 75, "Baker teaches a container with a flowable confectionery held therein, a non-edible handle that is disposed directly above the container, during consumption, with a body portion disposed below the handle and removably positioned within the container". The Examiner also stated that the recitation of "said handle portion and said body portion, comprising, in combination, an individual figurine" does not restrict the handle portion or body portion to form any particular shape and a figurine is taught by Baker.

Baker (Page 6, lines 15-19) recites containers comprising "a substantially rectangular pouch; a sack like pouch; a human shape; an alien shape; a coffin shape; a sarcophagus shape; a cauldron shape; a spacecraft or UFO shape; a basket shape; a can shape; and the like." Baker does also teach a flowable confection (Page 15, lines 5-11), and extractable utensil. Baker, Figures 15-17, shows a mummy and a sarcophagus, a skeleton and a coffin, and a vampire and a coffin respectively. Baker, Figures 19-21, shows an alien head and a space craft, a snake and a basket, and a wizard, respectively. All of the above

show a separate utensil (lollipop) from a container. None of the descriptions or Figures describe or suggest a container with the flowable confection and an entire figurine including a cap that is removeably disposed within the container.

Applicant teaches that the non-edible handle portion is on top of the cap and the lower body portion is below the cap and disposed in the container. Should the container with the flowable confection not contain the handle, middle and lower portion, the flowable confection would spill. Baker discloses edible lollipops completely separate from the flowable confection. In other words, if the handle and lower body portion is not in the container, the confection would spill out. Additionally, Baker, in Figures 15-17, 19 and 21, does not disclose entire bodies as figurines, with the cap forming the middle portion. For example, the mummy, skeleton and vampire have no legs and are completely detached from the sarcophagus, and coffins. Therefore, although Fig. 20 does show an entire snake body, it does not have a cap as a middle portion so that the portions, in combination, form an entire body. Accordingly, it is believed that claim 75 is allowable over Baker.

Regarding claims 77-82, 92, 93, 97-99, 101, and 102 (referenced in paragraphs 23 through 25 of the Office Action), these claims are dependent on claim 75 which is believed to be allowable over Baker. Accordingly, these claims are also believed to be allowable over Baker.

In paragraphs 26 through 29 of the Office Action, the Examiner rejected claim 96 under 35 U.S.C. § 103(a) over Conconi (WO 9918011) as applied to claims 75, 76, 78, 79, 83-88, 93-95, 97 and 99 above, further in view of Bobis (U.S. Patent No. 5354191). As stated above, Conconi discloses a complete figure attached to a cap, not a cap in the middle portion and an upper portion of a figurine above the cap, and the lower portion below the cap to form, in combination, an entire body figurine. Conconi also discloses a confectionary that is melted and frozen or re-frozen, not a powder. Conconi does not teach applicant's invention, and the addition of Bobis to Conconi does not remedy the situation, nor does the combination result in applicant's invention. Accordingly, claim 75 is allowable over Conconi in view of Bobis.

Regarding claims 78, 79, 86-88, 93-95, 97 and 99, these claims are dependent on claim 75 which is believed to be allowable. Accordingly, these claims are believed to be allowable over Conconi in view of Bobis.

In paragraphs 30 and 31 of the Office Action, the Examiner rejected claims 89-91 under 35 U.S.C. § 103(a) as being unpatentable over Conconi (WO 9918011) as applied to claims 75, 76, 78, 79, 83-88, 93-95, 97 and 99 above. The Examiner stated that Conconi teaches that the cap engages a seal, but does not teach a tab/slot/ridge arrangement for engaging the cap. The Examiner further stated that once it was known to sealingly and releaseably engage the container/cap, it would have been obvious to use the ridge/tab/slot configuration. Although applicant disagrees, claims 89-91 are dependent on claim 75, which is believed to be allowable over Conconi. Accordingly, these claims are also believed to be allowable over Conconi.

In paragraph 33 of the Office Action, the Examiner identified prior art made of record and not relied upon as considered pertinent to applicant's disclosure. Applicant considered the prior art Diresta (U.S. Patent No 6485348 B2 and D423183), Kiro (U.S. Patent No. 5634885), Collier (U.S. Patent No. 3085883), and the article by Humphrey identified by the Examiner. These references and, the other cited art of record, have been considered but are believed not to be relevant to applicant's invention.

In view of the above amendments and remarks, it is respectfully submitted that all grounds of rejection and objection have been avoided and/or traversed. It is believed that the case is now in condition for allowance and same is respectfully requested.

If any issues remain, or if the Examiner believes that prosecution of this application might be expedited by discussion of the issues, the Examiner is cordially invited to telephone the undersigned attorney for Applicant at the telephone number listed below.

Respectfully submitted,

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